BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5319 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

LOUISE M. O'NEILL
(Claimant)
S.S.A. No.

PACIFIC TELEPHONE
& TELEGRAPH COMPANY
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-246

FORMERLY
BENEFIT DECISION
No. 5319

The above-named claimant appealed from the decision of a Referee (LA-15638) which held that she was disqualified for benefits under the provisions of Section 58(a)(1) [now section 1256] and 58(b) of the Unemployment Insurance Act [now section 1260 of the Unemployment Insurance Code].

The claimant on November 10, 1947, had registered for work and filed a claim for benefits in the San Bernardino office of the Department of Employment. On August 26, 1948, she filed an additional claim for benefits. Upon receiving notice of this claim having been filed the employer herein protested payment of benefits contending the claimant had voluntarily left her work without good cause. On September 17, 1948, the Department issued a determination holding that the claimant was not subject to disqualification under the provisions of Section 58(a)(1) of the Act [now section 1256 of the code]. The employer appealed to a Referee who reversed the determination.

STATEMENT OF FACT

The claimant was employed on a split day shift as a telephone operator by the employer at its exchange in

the City of San Bernardino. While so employed she had care for her thirteen months old child on a twenty-four hour basis in a nursery home. On or about July 5, 1948, her husband became ill with the measles and the nursery home thereafter refused to care for the child because of its exposure to the measles. On July 7, 1948, after working for the employer for approximately three months the claimant was compelled to leave work to remain home for the purpose of caring for her child. She informed the employer as to the nature of the emergency requiring her to leave and asked at the time if she could be assigned to night work so she could continue working. The employer did not grant the request for night work because the claimant did not have sufficient seniority. When the claimant left she did not ask for a leave of absence because it did not occur to her to do so. The evidence shows that no offer of a leave of absence was made to the claimant when she left her work. Although the employer, during the first three or four weeks of training, acquainted its new employees with personnel policies, including the right to leaves of absence, the claimant was ill in a hospital during a portion of her training period and did not learn about the employer's leave of absence policy.

The claimant reapplied for work with the employer as soon as the emergency requiring her to remain home had ended and was promised re-employment.

REASON FOR DECISION

The question to be resolved herein is whether the claimant left her work with good cause within the meaning of Section 58(a)(1) of the Unemployment Insurance Act /now section 1256 of the code/. Recently we decided that a claimant who although having compelling reasons for leaving work constituting good cause negated such good cause by refusing to apply for a leave of absence offered by the employer. We reasoned in that case that in view of the employer's offer of a leave of absence and the circumstances leading to her leaving of work being such that it could be adjusted within a reasonable time the claimant was under an obligation to accept the leave of absence and preserve her position with the employer (See Benefit Decision No. 5296-11002).

The issue of what constitutes good cause for leaving work must be determined by the particular facts of each case and no general rule can therefore be made

applicable uniformly to all cases. Herein the illness of the claimant's husband and her child care problem as the result thereof concededly were compelling reasons constituting good cause for leaving work unless it can be said the good cause was negated by the fact that no leave of absence was sought by the claimant. The evidence in this case shows that at the time of leaving, the claimant informed the employer of the nature of the emergency requiring her to leave. She also asked to be assigned to night work so she could continue working. This request was not granted by the employer because the claimant did not have sufficient seniority. Although the employer had a leave of absence policy in effect the evidence shows that the employer did not inform the claimant thereof prior to her leaving nor did the employer offer to grant one to the claimant despite her efforts and willingness to continue working. Under the circumstances herein the claimant did everything that could be reasonably expected of her to preserve her position prior to leaving it and the employer did nothing to aid her in such effort. We hold therefore that her leaving of work on July 7, 1948, was with good cause within the meaning of Section 58(a)(1) of the Unemployment Insurance Act /now section 1256 of the code/.

DECISION

The decision of the Referee is reversed. Benefits are payable provided the claimant meets the eligibility requirements of the Unemployment Insurance Act during the period involved in the appeal.

Sacramento, California, March 10, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5319 is hereby designated as Precedent Decision No. P-B-246.

Sacramento, California, February 24, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

# DISSENTING OPINION

I dissent.

The 1949 case, here being elevated to precedent status, antedates by four years the "domestic leaving" provisions of section 1264 which was added to the Unemployment Insurance Code in 1953. The facts of this case appear to come squarely within the ambit of section 1264, and today the claimant's eligibility would have to be tested pursuant to the provisions of said section before a decision could be rendered. An antiquated case such as this, which arose before the enactment of a pertinent statute that has been on the books for more than 20 years, seems a poor choice for a precedent decision.

HARRY K. GRAFE